No. 84-1854

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

NORTHERN OIL COMPANY, INC., BRAY OIL COMPANY, INC., NORTHERN TERMINALS, INC., and DANA S. BRAY,

Petitioners,

v.

STANDARD OIL COMPANY OF CALIFORNIA and CHEVRON U.S.A. INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE TEMPORARY EMERGENCY COURT OF APPEALS

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

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Questions Presented

1. Is a release of claims arising under the Emergency Petroleum Allocation Act (EPAA) that had been negotiated over the course of four months by sophisticated commercial parties, each represented by counsel, enforceable as against a claim of fraud where the refiner allegedly stated falsely to its distributor that the Federal Energy Administration (FEA) had rejected the distributor's claims but

> (a) where the distributor and its attorney had made no effort to verify the refiner's statement with the FEA in the six weeks prior to the execution of the release, and
>
> (b) where the distributor and its attorney had met and discussed related matters with the FEA three weeks after the statement had allegedly been made and three weeks prior to the execution of the release and, despite that opportunity, had not asked the FEA to verify or explain the refiner's statement?

2. Does a release bar recovery under the EPAA of overcharge damages allegedly incurred after the release had been signed where the claim of overcharge was based upon an alleged misclassification of the purchaser and where the alleged misclassification (and deliveries at a price based on that classification) had been made and disputed well before the release had been signed?

List Pursuant to Sup. Ct. R. 28.1 of Affiliates and Subsidiaries (Except Wholly-Owned Subsidiaries) of Chevron U.S.A. Inc. and Chevron Corp.

Respondent Chevron U.S.A. Inc. is a wholly-owned subsidiary of Chevron Corp., the successor corporation to respondent Standard Oil Company of California.

The following is a list of affiliates and subsidiaries (except wholly-owned subsidiaries) of Chevron Corp.:

AMAX Inc.

American Overseas Petroleum Limited

Caltex Petroleum Corporation

Irving Oil Limited

P.T. Caltex Pacific Indonesia

UNC Resources, Inc.

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Statement of the Case

In the summer of 1975 petitioner Bray Oil Company, Inc. (Bray Oil) sought to obtain from respondent Chevron U.S.A. Inc. (Chevron) a new supply contract for home heating oil.[1] At that time the parties were in the midst of

[1] Petitioners' statement of facts contains a significant number of omissions and distortions, including errors with respect to facts relevant, if at all, only to the underlying EPAA claims, not to the issues concerning the release that are presented by the petition. Rather than correct each of those omissions and distortions here, we refer to the opinion of the Temporary Emergency Court of Appeals (TECA), which sets forth a more balanced statement of the facts necessary to understand the issues presented by the petition.

a dispute concerning the legality under regulations issued under the Emergency Petroleum Allocation Act (EPAA), 15 U.S.C. §§ 751 *et seq.*, of prices and credit terms in their prior two contracts.[2] Bray Oil contended that Chevron's price since August 19, 1973, had been too high because, it claimed, in determining the maximum allowable price for Bray Oil under the regulations, Chevron had improperly grouped or "classified" Bray Oil in the fall of 1973 or earlier with another class of Chevron customers that was being charged a higher price on the regulatory base date. *See* 10 C.F.R. §§ 212.82, 212.83(a). Bray also contended that it was entitled to be placed on consignment rather than on a fixed payment schedule and, accordingly, had refused to pay Chevron approximately $4 million due under the fixed payment schedule in the previous contract between the parties. Because of Bray Oil's refusal to pay its past-due account, Chevron was unwilling to extend further credit to Bray Oil.[3]

Petitioners informally prodded the Federal Emergency Administration (FEA) to issue a Notice of Probable Violation (NOPV), which was the first step in launching an investigation into the dispute over credit terms. During

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[2] The regulations were originally issued on August 19, 1973, pursuant to the Economic Stabilization Act, 12 U.S.C. § 1904, note (1980 Supp.), and then reissued under the EPAA with virtually no changes by the Federal Energy Office in January of 1974. 39 Fed. Reg. 1924-61 (1974).

[3] In attempting to justify the large past-due amount, petitioners omit from their Statement of the Case the fact that the fixed payment schedule had been proposed by Chevron and accepted by Bray after Chevron had discovered that Bray Oil had been cheating on consignment by selling over $1 million of Chevron product to Green Mountain Petroleum Co. without having reported such sales in accordance with the consignment agreement. (*See* Petitioners' Appendix (PA) 169-74). Petitioners also fail to mention that the jury found that the Green Mountain scam had constituted a breach of the consignment agreement, *see* Special Verdict 9A, PA 139, and that, based on that finding, the district court had concluded that the change in credit terms had been justified. PA 171-74.

a period of more than six months petitioners repeatedly supplied the FEA with information designed to fuel that investigation.[4] Petitioners' attorney still hoped, however, to achieve a negotiated resolution of the dispute and adopted a strategy of operating behind the scenes rather than of filing a formal complaint with the FEA. *See* PA 92-93.

Chevron, after having conducted its own internal review, concluded that petitioners' claims were baseless and were at best a negotiating ploy. Nevertheless, because of the enormous sum that Bray Oil was refusing to pay for product already delivered and because of the uncertainty created by petitioners' persistent challenges to Chevron's class of purchaser determination and the change in credit terms, Chevron was reluctant to enter into a further contract with Bray Oil unless the parties could put those disputes behind them. Accordingly, beginning in June of 1975 Chevron repeatedly requested that a release be given in connection with any new contract.

Between June 10, 1975, and October 14, 1975, the parties negotiated with respect to the new supply contract and the release. Petitioners at times offered a release if they could obtain the right concessions from Chevron in return.

Bray Oil's primary negotiator was Dana Bray, the president and sole shareholder of Bray Oil, Northern Oil and Northern Terminals. Mr. Bray was a shrewd negotiator and an experienced businessman with wide-ranging real estate holdings. *See* PA 91. For more than 20 years he had negotiated contracts with Chevron, often on extremely favorable terms. At all times Bray Oil was represented in the 1975 negotiations by its attorney, Mr. O'Brien, a former Vermont judge.

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[4] In fact, petitioners and their attorney were the only source, other than Chevron, of information obtained by the FEA during its investigation.

The negotiations produced a settlement under which Chevron agreed to supply Bray Oil for another year on 30-day credit terms (rather than on a cash before delivery basis), to accept an interest-free promissory note with an extended payment schedule for the then past-due amount of $3 million (rather than requiring immediate payment), and to forego its demand for 9% interest on the past-due amount. As part of that settlement the parties agreed to continue the price terms of the previous two contracts and to exchange mutual releases. Bray Oil executed the new supply contract and the mutual release on October 14, 1975. Chevron believed that as a result of the settlement, the parties had finally placed their differences behind them and could continue to do business on a clean slate.

At the conclusion of the 1975-76 heating season, when federal price controls on middle distillates were lifted, Mr. Bray, then 67 years of age, sold his heating oil business. Mr. Bray refused to pay Chevron the approximately $1.1 million that Bray Oil owed for product, much of which had been delivered to Bray Oil under the new credit terms granted in the 1975-76 contract, and nearly $800,000 that was still owed under the interest-free promissory note.

When Chevron learned that Mr. Bray was selling his business, Chevron commenced a collection action against petitioners in state court on August 2, 1976. In response to that collection action, petitioners asserted that Bray Oil had been overcharged and that the 1975 settlement agreement was invalid on grounds of fraud (and duress).[5]

Petitioners' fraud claim was essentially as follows: Mr. Pfefferkorn of Chevron wrote a letter to Mr. Bray on August 28, 1975, noting in passing that the NOPV had been "formally rescinded," which was admittedly the fact, and then allegedly phoned Mr. Bray on the same date and

[5] Petitioners subsequently filed this federal action based on their overcharge claims under the EPAA and obtained a stay of Chevron's collection action in state court.

stated that the Region I office of the FEA had rejected the claims made by Bray Oil and had cleared Chevron's pricing and credit terms. In fact, the FEA had not reached petitioners' claims on the merits, with the rescission of the NOPV having meant only that the investigation had been suspended, not terminated. Petitioners claimed that the rescission letter and the alleged statement, made six weeks before the release was signed, caused them to lose confidence in prevailing on their claims against Chevron and to agree to the settlement.

Whether the oral statement was ever made was vigorously disputed at trial.[6] There can be little dispute, however, about the following facts relevant to the fraud allegation.

Document after document in petitioners' files established that before August 28, 1975, the FEA had advised petitioners and their attorney that it lacked the manpower to make Bray Oil's case for it (if there were any such case to make) and that it would not consider petitioners' claims on the merits unless petitioners should first file a formal complaint. *See, e.g.,* PA 79, 95. No such complaint was ever filed.

Moreover, after the date of the alleged statement petitioners' actions actively demonstrated that, contrary to what Mr. Bray later said that Mr. Pfefferkorn had said to him over the telephone,[7] petitioners were fully aware that the FEA had not ruled against them on the merits and that the FEA remained fully available to them as a forum. Though at trial Mr. Bray professed to have been "shocked" at the alleged news received from Mr. Pfeffer-

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[6] It is assumed here, only for purposes of argument, that the statement was made. The facts recited below strongly suggest, however, among other things, that the statement was never made.

[7] Mr. Bray had testified repeatedly before trial that, long before August 28, 1975, he had come to distrust any statement made to him by Mr. Pfefferkorn. *See* PA 93.

korn, petitioners had never contacted the FEA to learn the basis for the FEA's decision, whether the FEA's investigation would continue or whether an appeal was available. Instead, within days after the alleged statement, petitioners were still preparing to file with the FEA the formal complaint against Chevron that the FEA had advised them before rescinding the NOPV would be a prerequisite to any further investigation and a determination on the merits by that agency.

For example, on September 5, 1975, Mr. O'Brien wrote to Mr. Bray, not to suggest that filing a formal complaint with the FEA would now be a futile act but, to the contrary, to advise Mr. Bray as to the options for selecting an attorney to prosecute that complaint. Again, in a letter to Mr. Bray dated September 9, 1975, Mr. O'Brien, after analyzing the relevant law, stated his opinion that petitioners had valid claims under the regulations and concluded:

> "I, therefore, feel somewhat stronger in having this matter resolved by the FEA and, so long as the mandatories continue, see no particular risk to proceeding with the complaint. In view of the present situation, you hardly have any alternative." PA 94.

Moreover, Mr. Bray conceded the point at trial:

> "Q. So that more than 10 days after you supposedly heard that the FEA had ruled against you on the merits, your attorney is still advising you full speed ahead on the formal complaint with the FEA, correct, sir?
>
> "A. Absolutely, yes."

On September 17, 1975, representatives of Chevron, Bray Oil, the FEA and state energy officials met in Albany and discussed in part Chevron's request for a release as a condition of a new supply contract. *See* PA 84-85. Despite the

opportunity provided by that discussion, petitioners did not ask the FEA attorneys present the basis for the FEA "decision" in favor of Chevron on the merits or whether the FEA's investigation would continue. Rather, Mr. O'Brien, further confirming the Bray belief that the FEA had never ruled on the merits of petitioners' claim, used the opportunity to present to the Regional Counsel of the FEA office that had rescinded the NOPV petitioners' version of the Green Mountain transaction (the transaction that was a principal part of Chevron's defense to the NOPV). Mr. O'Brien considered the FEA's reaction to be favorable.

Further acknowledgment of that belief came on September 23, 1975, when Mr. Bray wrote to his bank, The First National Bank of Glens Falls, that he still expected to obtain relief against Chevron on his federal claims:

> "Of course, it goes without saying that if Chevron is forced to pay us back for overcharges and other things, we will pay you in full immediately." PA 95.

Mr. Bray's banker testified that Mr. Bray had advised him both before and after September 23, 1975, "that FEA had not resolved the dispute that he had with Chevron" and that Mr. Bray expected to prevail on his claims.

Mr. Bray testified at trial that he entered into the settlement in October 1975, not because he had come to lack confidence in his claims against Chevron but because the terms of the settlement would buy him the time he felt he needed to make a favorable sale of his business:

> "Q. As I understand it, you had some advice from Mr. O'Brien, according to the information in those letters [of September 5 and 9], that he felt that you had a valid case in terms of a claim either in the courts or through the FEA against Chevron, correct?
>
> "A. Yes. *We felt we had a valid claim and I didn't dispute that fact, but I needed time* because by the

> time I got into this material I realized Chevron didn't want me any more, didn't want our companies' business any more, and I had to stay going if I was going to sell out and realize anything from my properties." (Emphasis added.)

Against the background of that record, the district court concluded that there was insufficient evidence in the record from which a jury could have found by clear and convincing evidence four elements of petitioners' fraud claim: that petitioners did not know the true facts (Special Verdict 2d), that the true facts were not open to petitioners' knowledge (Special Verdict 2e), that the alleged statement was material (Special Verdict 2f), and that petitioners had relied on the alleged statement in releasing their EPAA claims (Special Verdict 2g). In affirming the district court's ruling with respect to Special Verdict 2g, TECA ruled that because petitioners had the opportunity (including a face-to-face meeting) to learn from the FEA that the FEA had not reached the merits and that its investigation was still open, petitioners, in settling their EPAA claims, had no right as a matter of law blindly to rely on the alleged false statement. Having concluded that one of the elements of fraud was missing and that the release was enforceable, TECA did not review the district court's conclusion that the other special verdicts should be set aside, including the district court's determination that the FEA had directly advised petitioners that they had decided not to rule on the merits of petitioners' claims.

TECA also held that the cause of action for an overcharge accrued at the time of the alleged misclassification in 1973, from which it followed (and TECA so held) that petitioners could not claim damages for deliveries received after the release had been signed with respect to such earlier misclassification. Thus, TECA's rulings on the release disposed of the litigation in its entirety.

Reasons for Denying the Writ

As is shown in the following pages, the writ should be denied because the holding by TECA that the release is enforceable and bars each of petitioners' claims is legally sound. Regardless of the correctness of that ruling, however, this case does not meet the minimum standards ordinarily followed by this Court in exercising its discretion to grant *certiorari* review.

This case presents no important federal question. *See* Sup. Ct. R. 17.1(c). The two issues presented by the petition—(1) under what circumstances will a release of EPAA claims be deemed unenforceable? and (2) when does a cause of action for an overcharge accrue under EPAA regulations?—are extremely unlikely to recur. We are unaware of any other pending case in which either of those issues is presented. Consequently, a decision by this Court would have no utility beyond the dispute between these two parties.

The federal issues raised are at best only of historic interest to anyone other than Bray Oil and Chevron. The specific regulations at issue here were lifted as of July of 1976 when heating oil prices were decontrolled, 41 Fed. Reg. 34,008 (1976), and the EPAA expired by its own terms in September of 1981. *See Tully* v. *Mobil Oil Corp.*, 455 U.S. 245, 246 (1982). The expiration of the EPAA "signal[led] the end of federal concern in this area". *Tully* v. *Mobil Oil Corp.*, 653 F.2d 497, 502 (Temp. Emer. Ct. App. 1981), *vacated and remanded on other grounds*, 455 U.S. 245 (1982). Indeed, as TECA has recognized, the EPAA is contrary to the current federal energy policy of decontrol. *Gulf Oil Corp.* v. *Dyke*, 734 F.2d 797, 808 (Temp. Emer. Ct. App. 1984), *cert. denied*, 105 S. Ct. 173 (1984). Therefore, review by this Court would promote no existing federal interest.[8]

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[8] Thus, not surprisingly, there appears to be no case since 1980 in which this Court has granted *certiorari* to review an EPAA issue.

No conflict among the circuits exists with respect to either of the issues presented here. *See* Sup. Ct. R. 17.1(a). Since each issue arises under the EPAA and TECA has exclusive jurisdiction over EPAA issues, no other appellate court has addressed, or will address, that issue. Moreover, there is no disagreement even among various panels of TECA with respect to either issue. As is shown below, TECA's decision in this case simply follows the teaching of its own numerous precedents.

Nor does the TECA decision conflict with any applicable decision of this Court. Sup. Ct. R. 17.1(c). Contrary to petitioners' suggestion, this case is not governed by general principles of federal common law announced nearly a century ago by this Court but depends on the interpretation of the policies underlying a particular statute—the EPAA—and of the regulations issued thereunder. This Court has never addressed either of the questions raised by the petition, each of which is a unique EPAA issue.

Accordingly, no issue worthy of *certiorari* review is presented by the petition.

I.

TECA's Ruling That the Release Is Enforceable Is Correct.

In affirming the district court's rejection of petitioners' fraud claim, TECA held that in settling claims under the EPAA, a sophisticated commercial party cannot blindly rely on a false statement by its seller that the FEA has found those claims to lack merit. PA 11. In so doing, TECA followed the principle that it had announced in *Western Mountain Oil Inc.* v. *Gulf Oil Corp.*, 726 F.2d 765 (Temp. Emer. Ct. App. 1983), where TECA had rejected a claim of fraudulent concealment that had been based on an alleged misrepresentation virtually identical to that alleged by petitioners here. *See* PA 11-12. Partly because

of the strong EPAA policy favoring private settlement of disputes under the statute, TECA applied to petitioners' attempt to set aside the release the *Western Mountain* proscription against "blind reliance" upon misrepresentations concerning FEA opinions or actions. *See* PA 12-13.

Petitioners' devote most of their argument on that issue to setting up and tearing down a straw man. Thus, petitioners say that TECA erred by misapplying "the rule" of *Shappirio* v. *Goldberg*, 192 U.S. 232 (1904), which they characterize as "the last controlling statement by this Court of the federal 'access' common law principle of fraud". Pet. at 32. They argue that the evidence "doesn't come close to showing a 'means of knowledge' defense under *Shappirio*". Pet. at 41.[9]

Contrary to the impression petitioners seek to create, TECA did not rely on or even cite *Shappirio* in its opinion. Indeed, *Shappirio* has nothing to do with this case. It does not involve the EPAA or, for that matter, any federal statute. It is simply a pre-*Erie* decision of this Court sitting as the highest court in the District of Columbia in a lawsuit involving a conveyance of real estate. Petitioners' error, of course, is to assume that there is some transcendent body of federal common law that establishes a test for justifiable reliance independent of the particular federal statute under which the substantive claims that have been released arise. The pre-*Erie* holding in *Shappirio*, though consistent with the TECA holding here, is not binding on TECA and provides little, if any, guidance on how TECA, in determining the validity of a release of EPAA claims and in fashioning a legal standard of justifiable reliance, is to harmonize competing EPAA policies.

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[9] Much of the petition asks this Court to examine the sufficiency of the evidence on the issue of justifiable reliance. Whether or not *Shappirio* was binding upon TECA, sufficiency of the evidence issues hardly present the type of question that is worthy of a grant of *certiorari*.

TECA's decision was based not on *Shappirio* but on *Western Mountain* and on the EPAA policy against permitting the easy avoidance of settlements. As TECA stated, "[w]e have made it quite clear, however, that the EPAA embodies a policy favoring private settlement of disputes under the statute." PA 13 (citation omitted). As this Court has recognized, TECA was specially created to be "a court intimately familiar with the intricacies of federal energy regulation. . . ." *Tully* v. *Mobil Oil Corp.*, 455 U.S. 245, 248 (1982). Consequently, considerable deference should be given to TECA's interpretation of EPAA policies and the weight to be given competing policies. That being so, it cannot be said that TECA erred by following a rule that prohibits sophisticated commercial parties represented by counsel from seeking to abandon their settlement of past disputes by asserting that they had blindly relied on an adversary's allegedly false statement of the status of FEA action.

Such allegedly blind reliance in this case was even more egregious than that which was considered sufficient by TECA to warrant summary judgment in *Western Mountain*. Not only did petitioners fail to lift a finger to contact the FEA after, as they say, they had been told by the untrusted Mr. Pfefferkorn that their claims had been rejected by that agency, but it is undisputed that on September 17, 1975, three weeks after the statement had allegedly been made and three weeks before the release was signed, their attorney had met face to face with the Regional Counsel of the FEA office that had rescinded the NOPV, had discussed with him certain subject matter underlying the NOPV but had failed to ask whether the FEA had ruled against petitioners on the merits or whether the FEA's investigation was closed. TECA rightly concluded that as a matter of law, when the opportunity to learn the true facts was immediately available to petitioners, they could not reject that opportunity and years later seek to avoid the settlement that they had made of their EPAA claims.

Petitioners argue that FEA regulations concerning pre-clearance of the release of information in FEA files and FEA decisions with respect to the release to third parties of NOPVs while an investigation was pending prevented petitioners from learning the true facts. Pet. at 42-47.[10] Those regulations and decisions were, however, obviously intended only to prevent unauthorized disclosure of confidential information acquired during the investigation and of FEA investigative methods and deliberations, as well as unauthorized disclosure of information that, if disclosed before the investigation had been completed, might unnecessarily damage the reputation of the subject of an investigation.

As noted above, deference should be given to TECA's construction of FEA regulations. In that regard TECA specifically held in this case (PA 13) that the regulations and FEA decisions in question did not preclude the FEA from stating whether an investigation that the agency had told a customer had been commenced and in which the customer had been deeply involved remained open or had been closed. Indeed, it is beyond reason for petitioners, who had supplied all the information upon which the FEA was basing its investigation and who were the only party interested in the NOPV, now to contend that they would have been barred by those regulations from learning the one fact that they claim they needed to know: whether the FEA investigation that they were fueling had been terminated on the merits.[11]

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[10] Perhaps aware that those regulations and decisions were inapplicable to the type of limited information petitioners claim was material here—whether the FEA had ruled on the merits—petitioners failed to raise the existence of those regulations and decisions before either the jury or the district court.

[11] Even though, as TECA held, pre-clearance by the General Counsel would not have been necessary under 10 C.F.R. § 202.22, petitioners made no showing that clearance of the disclosure of such limited information, if requested, would not have been forthcoming.

Petitioners also contend that while federal law should govern the validity of a release of EPAA claims, TECA erred in not incorporating Vermont law as the applicable federal rule of decision. Pet. at 52-59.[12] Once again petitioners would have had TECA ignore the particular federal statute under which petitioners' claims arise and the strong policy underlying that statute that favors private settlements. It was certainly proper for TECA, in order to effectuate that federal policy, to go beyond state law (if indeed it did so) and to apply a more stringent standard of justifiable reliance in determining the validity of a release of EPAA claims negotiated by sophisticated commercial parties represented by counsel.

Petitioners argue finally that even if TECA applied the correct federal rule to uphold the validity of the release as to EPAA claims, a Vermont rule should have been applied to test the enforceability of the release as against petitioners' "independent state law claim of fraud" in connec-

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[12] Although TECA was not required to apply a federal rule that resembled Vermont law, the result would have been the same under Vermont law. Vermont law requires a party claiming fraud to prove that the true facts were not "open to [the] knowlege" of that party. *Union Bank* v. *Jones*, 411 A.2d 1338, 1342 (Vt. 1980); *Anderson* v. *Knapp*, 225 A.2d 72, 76 (Vt. 1966); *Batchelder* v. *Birchard Motors, Inc.*, 144 A.2d 298, 230 (Vt. 1958). Even assuming for purposes of discussion that the open to knowledge standard is more favorable to petitioners than the test for reliance adopted by TECA, the September 17, 1975, meeting between petitioners' attorney and the FEA satisfies either test. Thus, the district court set aside not only Special Verdict 2(g) on reliance but also Special Verdict 2(e), in which the jury had found that the true facts were not open to the knowledge of petitioners.

Moreover, petitioners do not explain why, even if TECA were required to incorporate state law as the federal law governing the release executed by Bray Oil, a New York corporation, it was required to choose Vermont law rather than New York law. As the Second Circuit made clear in *Grumman Allied Industries* v. *Rohr Industries, Inc.*, 748 F.2d 729 (2d Cir. 1984), New York adopts a rule prohibiting blind reliance that is similar to that applied by TECA in this case.

tion with the supply contract dated as of May 1, 1973. Pet. at 60-61. But petitioners had not asserted any independent state law claim of fraud in this case. Their "1973 fraud claim" was part and parcel of their federal claim.[13] That fraud claim was as follows:

On August 19, 1973, the Cost of Living Council (COLC) adopted the Phase IV price control regulations which, as modified in September of 1973, required refiners to place their customers in "classes of purchaser" as of May 15, 1973, and to charge their customers a price no higher than the weighted average price charged in transactions with each class of purchaser on May 15, 1973, plus increased costs. Chevron proceeded to classify Bray Oil according to the terms of the contract that determined the price to Bray Oil on May 15, 1973, which was the contract dated as of May 1, 1973. Petitioners claimed that the as of May 1 contract was procured by fraud because, according to petitioners, Chevron had misrepresented "its reason" to Bray Oil for having desired a May 1 commencement date. According to petitioners, Chevron had wanted that date because it had foreknowledge of the COLC's consideration of May 15, 1973, as a possible base date for the Phase IV regulations, and the new contract would have established a higher price as the base price under those regulations if they were ever adopted.[14] Petitioners claimed that if the as of May 1, 1973, contract were invalid because of fraud, the base price that Chevron used for Bray Oil was too high and, therefore, that Bray Oil was entitled to overcharge damages under the Phase IV regulations from the date

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[13] The relief petitioners sought as a result of the alleged fraud was overcharge damages under Section 210(b) of the ESA and consequential damages under Section 210(a) of that Act.

[14] Actually, the as of May 1, 1973, date had first appeared on the contract drafts beginning in February of 1973, which was at least four months before the COLC even began to consider May 15, 1973, as a possible base date for the Phase IV regulations.

those regulations became effective, which was August 19, 1973.[15]

As is evident, the assertion that the 1973 contract was invalid because of fraud was simply a part of petitioners' overcharge claim. As the district court stated, the alleged misrepresentation in 1973 about Chevron's reason would have been "harmless" but for the federal price regulations. PA 183. Thus the district court held as follows:

> "... Other than the overcharges asserted to be in violation of federal law, the jury was provided with no rational basis for establishing injuries suffered as a consequence of the [otherwise "harmless"] fraud which induced and infected the 1973-74 supply agreement.
>
> "For reasons stated earlier in this memorandum, the court now holds that all claims for recoveries which occurred prior to 1975 have been compromised and released by express agreement of the parties.
>
> "Putting the force and effect of the 1975 release aside for the moment, the full impact of the fraud claimed by the plaintiffs is based on the price controls imposed by virtue of the federal energy regulations. In an uncontrolled market there would have been no injury caused by Chevron's misrepresentation concerning the reason for its insistence on the retroactive

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[15] The statement by petitioners (and by Judge Hoffman, dissenting in part in TECA, PA 19) that "both the district court and the TECA found the 1973 and 1974 contracts invalid" (Pet. at 25) is simply wrong. Because TECA's ruling that the release was enforceable made it unnecessary to reach petitioners' 1973 fraud claim, TECA never addressed respondents' arguments that petitioners had failed to state a claim of fraud as a matter of law, that the jury verdicts compelled dismissal of the fraud claim, that there was no competent evidence of Chevron's alleged foreknowledge of the May 15 base date and that the record precluded a finding that knowledge of that date would have been material to Mr. Bray, who continued to sign contract documents even after he had learned of the May 15 base date. *See* PA 150.

> effective date imposed in the 1973-74 contract. The claims of fraud advanced by the plaintiffs are inextricably tied to the federal regulations. The origin of the claims resides in the federal regulatory scheme; it is within that framewor' that they must be dealt with. It is only within those boundaries that the plaintiffs' award must be measured in terms of the statutory sanctions and litigation costs available under the pertinent provisions of the Economic Stabilization Act." PA 113-14.[16]

Since petitioners have raised no independent state law claim for damages in this case, there was no reason to apply state law to make a second determination of the validity of the release. Therefore, TECA's ruling that the

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[16] Petitioners intimate that if the 1973 contract were to be rescinded, they would have a claim for breach of contract (the supply contract executed in 1968 and due to expire on May 31, 1973) for deliveries made between May 1 and May 31, 1973. The value of that claim, if anything, amounts to $277, the transportation costs borne by Bray Oil on a handful of truck deliveries made in May of 1973. Not surprisingly, petitioners failed to raise any such breach of contract claim in the district court or before TECA.

In addition to their TECA appeal, petitioners also filed a companion appeal with the United States Court of Appeals for the Second Circuit. That appeal was briefed and argued in October of 1984, following which the Second Circuit ordered a stay pending determination of petitioners' appeal from the same judgment to TECA. After the TECA mandate had issued, respondents moved to dismiss the Second Circuit appeal. Petitioners opposed that motion on the ground that they had an independent state law claim not covered by the TECA decision. In that regard petitioners made reference, just as they do here, to a claim for contract damages for deliveries made during May of 1973. On June 18, 1985, the motion to dismiss was granted by the Second Circuit panel before which the appeal to that Court had earlier been argued and to which the motion to dismiss had been referred for decision.

release was enforceable as a matter of federal law was correct and dispositive of the entire case.[17]

II.

The Decison of TECA That All Petitioners' Overcharge Claims Accrued Before the Release Was Signed Is Correct.

The only pricing violation at issue in this case was whether Chevron had violated the Phase IV regulations. As noted earlier, once a customer was classified under those regulations and the May 15 price to the class calculated, the resulting "base price" remained the base price for the class for the duration of the federal price controls on heating oil, *i.e.*, from August 19, 1973, to July of

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[17] Petitioners suggest that the release is "void" because they were unaware of their 1973 fraud claim and, thus, of a basis for their overcharge claim when they signed the release. Pet. at 22-27. But petitioners have identified no portion of the EPAA which precludes the release of unknown claims, and TECA, in rejecting petitioners' position, has instead interpreted that statute as encouraging settlements of EPAA claims of whatever variety. *See* PA 12-13. TECA's view that unknown EPAA claims may be released is consistent with the position taken by other circuits in enforcing releases of other federal claims. Thus, in *Ingram Corp.* v. *J. Ray McDermott, Inc.*, 698 F.2d 1295, 1312 (5th Cir. 1983), a case relied upon extensively by petitioners (Pet. at 27-29), the Fifth Circuit held:

> "... When a release provides that 'any and all claims,' 'past, present, or future' are to be extinguished, a court is required to enforce its provisions both as to known and unknown claims. A contrary result would not contribute significantly to the public policy of encouraging the settlement of differences and compromise of disputes in which the execution and exchange of releases is the common and legally accepted means of consummation."

Moreover, in this case the history of the negotiation of the release made it clear that the parties fully intended to put to rest all accrued EPAA claims so that the parties could operate on a clean slate in future business dealings.

1976. The initial act of classification thus dictated the maximum allowable price to each customer as long as the amount and allocation of increased costs subsequently passed through by the refiner were properly calculated. *See* 10 C.F.R. § 212.83(a).

TECA held in this case that petitioners' overcharge claims accrued in the fall of 1973 when Chevron allegedly misclassified Bray Oil—not each and every time there was a new delivery or agreement to sell. It did so because the sole basis for petitioners' claim of overcharge was the alleged misclassification in 1973.[18] Nor was that holding one with which TECA was breaking new ground. It was simply following five of its own prior decisions, each of which had rejected "the continuing violation" concept in determining when a cause of action accrued under EPAA regulations. *See Lerner* v. *Atlantic Richfield Co.*, 731 F.2d 898, 900-01 (Temp. Emer. Ct. App. 1984); *Western Mountain Oil, Inc.* v. *Gulf Oil Corp.*, 726 F.2d 765, 767 (Temp. Emer. Ct. App. 1983); *Fleetwing Corp.* v. *Mobil Oil Corp.*, 726 F.2d 768, 770 (Temp. Emer. Ct. App. 1983); *Siegel Oil Co.* v. *Gulf Oil Corp.*, 701 F.2d 149, 153 (Temp. Emer. Ct App 1983); *Shell Oil Co* v. *Nelson Oil Co.*, 627 F.2d 228, 236 (Temp. Emer. Ct. App.), *cert. denied*, 449 U.S. 1022 (1980). Three of those decisions—*Western Mountain, Fleetwing* and *Lerner*—had decided precisely the issue in this case and had held that a cause of action for an overcharge based on a misclassification accrues when the act of misclassification occurs, not each and every time there is another de-

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[18] If, for example, petitioners' overcharge claim had been based on an improper application each month of the formula for allocating increased costs in calculating the maximum allowable price, a different result might have been reached on the accrual question. *See Western Mountain, supra* at 767-68. That was not, however, the case here. The claim of overcharge was based exclusively on an allegd misclassification.

livery or sale at a price based on that misclassification.[19] TECA's rejection of the continuing violation concept was also consistent with the EPAA policy that the statute be viewed as a temporary interference with the free market and, thus, that litigation under the Act not continue unnecessarily for years beyond the statute's expiration. *See Gulf Oil* v. *Dyke, supra* at 808.

Since TECA's ruling that the pricing violation, if any there were, had occurred before the release was signed (even assuming that petitioners had suffered some damages from such violation because of deliveries made after the release had been signed), petitioners' contention that the release violated public policy by authorizing future violations is baseless.

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[19] Judge Hoffman, dissenting on that issue, believed that a new cause of action should accrue each time a contract was signed that utilized a price based on the original misclassification. But the regulations give no special significance to the existence of a contract. Indeed, under the mandatory allocation regulations adopted in January 1974, 10 C.F.R. § 211 *et seq.*, supply contracts were rendered entirely irrelevant. Under those regulations a refiner was required to supply its base period customers with base period quantities at controlled prices whether or not there was a contract. Thus, the 1975-76 supply contract, though important because of the significant concessions it made to Bray Oil in return for the release, made no difference whatsoever with respect to Chevron's pricing and supply obligations, which were dictated by federal law.

CONCLUSION

For the foregoing reasons, the petition for a writ of *certiorari* should be denied.

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